

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

PAUL HUPP,

Plaintiff,

vs.

VICKI KURPINSKY aka VICKI  
CASTELLANOS, DEBRA MURPHY  
LAWSON, DJINNA M. GOCHIS, AND  
ROES 1-25, individually and in their  
official capacity as State Bar of California  
employees, jointly and severally,

Defendants.

CASE NO. CV 10-00413 UA (RC)  
CV 10-00790 UA (RC)

ORDER DENYING PLAINTIFF'S MOTION  
TO DISQUALIFY JUDGE CHAPMAN

On April 8, 2010 plaintiff filed a motion to disqualify Magistrate Judge Rosalyn Chapman in *Hupp v. Krupinsky* ("*Hupp IV*"), CV 10-00413 UA (RC).<sup>1</sup> The matter was initially referred to Judge Audrey Collins, who on April 8, 2010 denied plaintiff's application to proceed *in forma pauperis*.<sup>2</sup> The motion to disqualify was then referred to this court under General Order 08-05

<sup>1</sup>See Plaintiff Paul Hupp's Motion to Disqualify Judge Rosalyn M. Chapman for Cause ("*Hupp IV* Motion"), Docket No. 3, 10-cv-00413 UA (RC) (Apr. 8, 2010).

<sup>2</sup>Reasons Supporting Denial of Plaintiff's Request to File Action in Forma Pauperis ("Order"), Docket No. 8, CV 10-00413 UA (RC) (Apr. 8, 2010). The history of plaintiff's application to proceed *in forma pauperis* in *Hupp IV* is confusing at best. On March 18, 2010, plaintiff filed a request to proceed *in forma pauperis* and lodged his complaint. (Request to Proceed in Forma Pauperis with Declaration in Support ("IFP Request"), Docket No. 1, CV 10-

1 and Local Rule 72-5.<sup>3</sup> On June 7, 2010, plaintiff filed a motion to disqualify Judge Collins and  
 2 Magistrate Judge Chapman in *Hupp v. Krupinsky* (“*Hupp V*”), CV 10-00790 UA (RC).<sup>4</sup> This  
 3 motion was also referred to this court under General Order 08-05 and Local Rule 72-5.<sup>5</sup> The  
 4 court finds the motions appropriate for decision without oral argument pursuant to Rule 78 of the

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 6 00413 UA (RC) (Mar. 18, 2010).) On March 24, 2010, Judge Chapman issued an order to show  
 7 cause why plaintiff should not be declared a vexatious litigant and ordered plaintiff to respond no  
 8 later than April 7, 2010. (Order to Show Cause Why Plaintiff Should Not Be Declared a  
 9 Vexatious Litigant (“OSC”), Docket No. 2, CV 10-00413 UA (RC) (Mar. 24, 2010).) Plaintiff  
 10 has previously been declared a vexatious litigant by Judge Percy Anderson, but only with respect  
 11 to suits against the United States (and its agencies or departments), certain private defendants, or  
 12 any defendant alleging specific claims arising out of plaintiff’s student loan debts. (Vexatious  
 13 Litigant Order, CV 09-02052-PA(AGRx), Docket No. 28 (May 27, 2009).) Although there is no  
 14 record that Judge Chapman decided plaintiff’s motion to proceed *in forma pauperis*, on March 31,  
 15 2010, plaintiff appealed Judge Chapman’s order to the Ninth Circuit on March 31, 2010.  
 16 (Plaintiff Paul Hupp’s Notice of Appeal Under Title 28 U.S.C. § 158 of His in Forma Pauperis  
 17 Application Denial, Docket No. 4, CV 10-00413 UA (RC) (Mar. 31, 2010).) The notice of  
 18 appeal refers to the request having been denied on March 24, 2010; this apparently refers to Judge  
 19 Chapman’s order to show cause. On April 7, 2010, Judge Collins denied a motion for leave to  
 20 appeal *in forma pauperis*, concluding that the proposed appeal was not taken in good faith and was  
 21 frivolous. (Order on Motion for Leave to Appeal in Forma Pauperis, Docket No. 10, CV 10-  
 22 00413 UA (RC) (Apr. 7, 2010).) On April 8, 2010, Judge Collins denied plaintiff’s request to  
 23 proceed *in forma pauperis* in district court. That same day, plaintiff filed the instant motion to  
 24 disqualify. On April 8, 2010, Judge Chapman referred the motion to Judge Collins under Local  
 25 Rule 72-2.1. (Order Referring Plaintiff’s Motion to Disqualify to Chief Judge, Docket No. 9, CV  
 26 10-00413 UA (RC) (Apr. 8, 2010).) On April 12, 2010, plaintiff responded to Judge Chapman’s  
 27 order to show cause. (Plaintiff Paul Hupp’s Reply to the Dis-Honorable Roselyn M. Chapman’s  
 28 March 24, 2010 Order to Show Cause, Docket No. 13, CV 10-00413 UA (RC) (Apr. 12, 2010).) Also on April 12, 2010, because she had signed the order that was the subject of plaintiff’s disqualification motion, Judge Collins recused herself from deciding the motion to disqualify. (Docket No. 14, 10-cv-00413 UA (RC) (Apr. 12, 2010).)

23 <sup>3</sup>See Referral of Motion to Disqualify Judge/Magistrate Judge, Docket No. 15, 10-cv-  
 24 00413 UA (RC) (Apr. 15, 2010).

25 <sup>4</sup>See Plaintiff Paul Hupp’s Motion to Disqualify Judges Rosalyn Merle Chapman and  
 26 Audrey Brodie Collins for Cause (“*Hupp V Motion*”), Docket No. 2, CV 10-00790 UA (RC)  
 27 (June 8, 2010).

28 <sup>5</sup>See Referral of Motion to Disqualify Judge/Magistrate Judge, Docket No. 3, CV 10-00790  
 UA (RC) (June 17, 2010).

1 Federal Rules of Civil Procedure and Local Rule 7-15. Having carefully reviewed the pleadings  
2 submitted, the court denies plaintiff's motions.

### 3 4 **I. FACTUAL & PROCEDURAL BACKGROUND**

5 *Pro se* plaintiff has filed these lawsuits challenging the finding by the State Bar of  
6 California that he is not of good moral character, and that he should be denied admission to the  
7 Bar. The State Bar's finding was based on a 1982 conviction for contributing to the delinquency  
8 of a minor as well as a failure to disclose two small claims court actions in which he was involved  
9 as either plaintiff or defendant. Plaintiff's lodged complaints in both federal actions state the same  
10 seven causes of action: (1) violation of plaintiff's First Amendment right to free speech;  
11 (2) violation of plaintiff's Fourteenth Amendment right to procedural due process; (3) a "request  
12 for declaratory and injunctive relief"; (4) intentional infliction of emotional distress; (5) a cause  
13 of action captioned "public employee liability for failure to discharge mandatory duties imposed  
14 by enactment"; (6) abuse of process; and (7) civil conspiracy.

15 *Hupp IV* and *Hupp V* are, respectively, the fourth and fifth lawsuits plaintiff has filed  
16 seeking review of the State Bar's action in federal court. See *Hupp v. Krupinsky*, CV 07-00620  
17 UA-RC ("*Hupp I*"); *Hupp v. Krupinsky*, CV 07-00728 UA-RC ("*Hupp II*"); *Hupp v. Krupinsky*,  
18 CV 09-01597 UA-RC ("*Hupp III*"). After Judge Alicemarie Stotler denied plaintiff's request for  
19 leave to proceed *in forma pauperis* in *Hupp I*, plaintiff appealed the ruling to the Ninth Circuit,  
20 which held:

21 "The district court did not abuse its discretion by denying Hupp's *in forma pauperis*  
22 application because Hupp sought to bring claims over which the court lacked  
23 subject matter jurisdiction. . . . See [*Minetti v. Port of Seattle*, 152 F.3d 1113,  
24 1115 (9th Cir. 1998) (per curiam)] (holding that district court did not abuse its  
25 discretion by denying *in forma pauperis* application where claims were barred by  
26 res judicata, lack of standing, and judicial immunity); *Giannini v. Comm. of Bar*  
27 *Exam'rs*, 847 F.2d 1434, 1435 (9th Cir. 1988) (per curiam) (holding that district  
28 court lacked subject matter jurisdiction where bar applicant failed to appeal the

Committee of Bar Examiners’ denial of his application to the California Supreme Court, because ‘[u]ntil such review is completed, an applicant has no basis for any claim of deprivation under federal law because no deprivation has taken place’.” *Hupp v. Kurpinsky*, 324 Fed. Appx. 623, 624 (9th Cir. Apr. 28, 2009) (Unpub. Disp.)

Plaintiff’s requests to proceed *in forma pauperis* were similarly denied in *Hupp II* and *Hupp III*, each on the basis that the court lacked subject matter jurisdiction. Plaintiff filed a notice of appeal in *Hupp III*, but the appeal was dismissed because plaintiff failed to pay docketing and filing fees.

Judge Collins denied plaintiff’s request on the same basis in *Hupp IV*, namely that plaintiff has not petitioned for review in the California Supreme Court and, consequently, the district court lacks subject matter jurisdiction. Because plaintiff filed the motion to disqualify in *Hupp V* before his *in forma pauperis* application was decided, that request remains pending.

Plaintiff’s motion to disqualify in *Hupp IV* is premised on his conclusion that Judge Chapman’s finding that no petition was filed before the California Supreme Court was “perjurious.” This assertion is premised on plaintiff’s conclusion that Judge Chapman’s findings in the four prior cases that no petition was filed in the California Supreme Court was “perjurious.” Plaintiff also alleges that because Judge Collins signed an order “incorporating Judge Chapman’s perjury, . . . Judge Collins is therefore suborning [Judge] Chapman’s perjury.”<sup>6</sup> These assertions apparently are based on plaintiff’s allegation that he filed a petition in the California Supreme Court seeking waiver of his State Bar Court filing fee, which motion was denied.<sup>7</sup>

## II. DISCUSSION

### A. Legal Standard Governing Motions to Disqualify

Motions to disqualify federal judges are governed by 28 U.S.C. § 144. Under that statute, a party seeking the recusal or disqualification of a judge must file a timely affidavit attesting that

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<sup>6</sup>*Hupp IV* Motion at 3.

<sup>7</sup>Lodged Complaint, ¶ 40.

1 the judge to whom the matter has been assigned has a personal bias or prejudice either against him  
 2 or in favor of an opponent. The affidavit must specifically state “the facts and reasons for the  
 3 belief that bias or prejudice exists.” 28 U.S.C. § 144.

4 A judge must be disqualified under § 144 if “a reasonable person with knowledge of all  
 5 the facts would conclude that the judge’s impartiality might reasonably be questioned.” *United*  
 6 *States v. Hernandez*, 109 F.3d 1450, 1453-54 (9th Cir. 1997). The bias or prejudice that must  
 7 be shown is not merely a favorable or unfavorable disposition toward a party, but rather a  
 8 “favorable or unfavorable disposition or opinion *that is somehow wrongful or inappropriate*, either  
 9 because it is undeserved, or because it rests upon knowledge that the subject ought not to  
 10 possess.” *Liteky v. United States*, 510 U.S. 540, 550 (1994) (emphasis added). For this reason,  
 11 “the alleged bias and prejudice . . . must stem from an extrajudicial source.” *Id.* at 544.  
 12 “[O]pinions formed by the judge on the basis of facts introduced or evidence presented during the  
 13 course of the proceedings are not grounds for disqualification unless there is evidence of such  
 14 deep-seated favoritism or antagonism that fair judgment would be impossible.” *Id.* at 555; see  
 15 also *United States v. Studley*, 783 F.2d 934, 939 (9th Cir. 1986).

16 “[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality  
 17 motion,” and even remarks by a judge that are critical, disapproving of, or hostile to a party will  
 18 not ordinarily support a challenge on the basis of bias or partiality. *Liteky*, 510 U.S. at 555; see  
 19 also *Studley*, 783 F.2d at 939 (judge’s prior rulings adverse to a tax-protestor defendant were not  
 20 sufficient cause for recusal).

#### 21 **B. Whether Judge Chapman Should Be Disqualified in *Hupp IV***

22 Plaintiff alleges that he has laid out his Due Process claim “in language even an untrained  
 23 circus chimp could understand” and that in response Judge Chapman, in this case and others, has  
 24 made “wild, nonsensical and unsupported rulings.” He alleges that she is “knowingly, willfully  
 25 and intentionally violating the Constitution,” and that Judge Chapman’s finding that the court lacks  
 26 subject matter jurisdiction is only supported by the “crazy, ridiculous and unsupported ramblings  
 27 of [Judge] Chapman” who is allowing the State Bar to engage in constitutional violations “with  
 28 impunity.”

1 Having reviewed the record, the court concludes that plaintiff's allegations of bias or  
 2 prejudice are unsupported. Plaintiff's supporting affidavit presents six facts: (1) that he filed this  
 3 case on March 13, 2010; (2) that Judge Chapman denied his application; (3) that Judge Chapman  
 4 gave no reason for her "August 28, 2010" denial and made reference to an attachment that was  
 5 not attached; (4) that Judge Chapman misstated material facts and law; (5) that Judge Chapman  
 6 denied oral argument on the request and did not permit rebuttal to her ruling; and (6) that the  
 7 Bar's decision is incorrect.<sup>8</sup>

8 The first, second, and sixth allegations do not speak to bias or prejudice; they merely assert  
 9 the procedural posture of the case. The third allegation, assuming it in fact refers to Judge  
 10 Collins' order denying *in forma pauperis*, is fully supported. The attachment is present, and is  
 11 a two page document titled "Reasons Supporting Denial of Plaintiff's Request to File Action in  
 12 Forma Pauperis." The document quotes the Ninth Circuit's decision in *Hupp I* and other relevant  
 13 case law in support of the ruling. Plaintiff's fourth allegation is entirely conclusory; it does not  
 14 identify any specific fact or rule of law ignored by Judge Chapman. Assuming the allegation  
 15 refers to plaintiff's assertion that Judge Chapman ignored his petition to the California Supreme  
 16 Court to waive filing fees, Judge Chapman's statement is correct. Plaintiff has not alleged that  
 17 he sought review of his moral character determination, but only of a request to waive a filing fee.<sup>9</sup>  
 18 Plaintiff's fifth allegation does not assert that he requested oral argument or an opportunity to  
 19 rebut, and the docket does not reveal that he did. Additionally, whatever denial of oral argument  
 20 or right of rebuttal occurred, plaintiff has not alleged it was based on bias or prejudice against him  
 21 or in favor of any defendant.

22 Plaintiff's bare assertions do not constitute the showing of personal bias required under  
 23 § 144. As previously noted, to be cognizable, bias or prejudice that "must stem from an  
 24 extrajudicial source." *Liteky*, 510 U.S. at 544. Whatever opinions Judge Chapman formed were  
 25 clearly "opinions formed by the judge on the basis of facts introduced or evidence presented,"

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 27 <sup>8</sup>*Hupp IV* Motion at 3-4.

28 <sup>9</sup>*Hupp IV* Complaint, ¶ 40; *Hupp V* Complaint, ¶ 40.

1 namely, Judge Chapman's and Judge Collins' evaluation of the complaint and the applicable law.  
 2 *Id.* at 555. Plaintiff was entitled to bring a motion to set aside Judge Collins' April 8, 2010 order,  
 3 and he was entitled to appeal that order. His disagreement with Judge Chapman's and Judge  
 4 Collins' evaluation of his complaint and application of the law does not, however, entitle him to  
 5 have Judge Chapman disqualified.

6 **C. Whether Judge Collins or Judge Chapman Should Be Disqualified in *Hupp V***

7 Plaintiff alleges that Judge Chapman "engaged in multiple acts of perjury by falsely  
 8 claiming Plaintiff's prior actions had no subject matter jurisdiction because Plaintiff had failed to  
 9 allege he 'petitioned' the California Supreme Court prior to filing of the actions, which we now  
 10 know was a straight up perjured lie by [Judge] Chapman. Judge Collins suborned [Judge]  
 11 Chapman's perjury by signing the Orders that incorporated said perjury."<sup>10</sup> This is the sole  
 12 ground on which plaintiff seeks Judge Chapman's and Judge Collins' disqualification in *Hupp V*.  
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14 Having reviewed the record, the court concludes that plaintiff's allegations of bias or  
 15 prejudice are unsupported. Although plaintiff references an attached declaration, there is no  
 16 supporting affidavit. The motion is therefore facially insufficient under §28 U.S.C. § 144, which  
 17 requires an "affidavit [that] shall state the facts and the reasons for the belief that bias or prejudice  
 18 exists."

19 Plaintiff's bare assertions do not constitute the showing of personal bias required under  
 20 § 144. Moreover, plaintiff's assessment that Judge Chapman is "perjurious" and that Judge  
 21 Collins suborns "perjury" is no more than a restatement of his disagreement with Judge Collins'  
 22 order in *Hupp IV*, as well as Judge Chapman's evaluation in *Hupp I*, *Hupp II*, and *Hupp III*. To  
 23 reiterate, to be cognizable, bias or prejudice "must stem from an extrajudicial source." *Liteky*,  
 24 510 U.S. at 544. The opinions formed by Judge Collins and Judge Chapman, as well as Judge  
 25 Stotler and the Ninth Circuit panel in *Hupp I*, were formed by evaluating the lodged complaints  
 26 and the law governing in forma pauperis applications and the district court's subject matter  
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28 <sup>10</sup>*Hupp V* Motion at 2.



1 jurisdiction. As with *Hupp IV*, in each of these actions plaintiff was entitled to move for  
2 reconsideration. He was also entitled to appeal, and did appeal *Hupp I*. He is not, however, on  
3 this record entitled to have Judge Chapman or Judge Collins disqualified.

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5 **III. CONCLUSION**

6 For the reasons stated, plaintiff's motions to disqualify Judge Chapman in *Hupp v.*  
7 *Krupinsky*, CV 10-00413 UA (RC), and Chief Judge Collins and Judge Chapman in *Hupp v.*  
8 *Krupinsky*, CV 10-00790 UA (RC), are denied.

9  
10 DATED: June 17, 2010



11 MARGARET M. MORROW  
12 UNITED STATES DISTRICT JUDGE  
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